

BEFORE THE STATE PARKS AND RECREATION BOARD AND  
THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
12.14.120 pertaining to payment of fees )  
for outfitting services )

TO: All Concerned Persons

1. On November 6, 2014, the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-438 pertaining to the proposed amendment of the above-stated rule at page 2707 of the 2014 Montana Administrative Register, Issue Number 21.

2. The commission and board have amended the following rule as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.14.120 COMMERCIAL USE PERMITS (1) through (7) remain as proposed.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:

(a) ~~not be cash;~~ be collected only with the express consent of the supervising outfitter; and

(b) name the outfitter that hired or contracted the services; ~~and~~

(c) ~~be directly deposited to the outfitter that hired or contracted the guide.~~

(9) The requirements in (8) do not prohibit the person a hired or contracted guide from receiving a cash tip that is separate from any the payment received for services provided as authorized by the sponsoring outfitter. ~~Proof of compliance with this rule must be made available to the department upon request. Any violation of these rules is subject to any and all penalties and fines by law.~~

(10) through (14) remain as proposed.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

3. The board and commission have thoroughly considered the comments and testimony received. A summary of the comments received and the responses are as follows:

COMMENT 1: A fishing outfitters' association commented that the current rule language could be simplified to align with current Board of Outfitters rules pertaining to the collection of fees by guides, which require the expressed consent of the outfitter in order for a guide to collect fees from a client. The association also

supported the proposal to allow guides to receive cash tips from any outfitter client fees.

RESPONSE 1: The commission and board adopted language that allows a guide to collect payment on behalf of an outfitter as long as the guide has the express consent of the supervising outfitter and the payment is directly deposited to the outfitter that hired or contracted the guide. The commission and the board also adopted language allowing a guide to receive a tip separate from the payment for services provided.

COMMENT 2: One comment supported the proposed changes with the exception of the language that would have prohibited a guide from collecting a cash payment from a client explaining that it is a common practice in the fishing outfitting industry and that most clients do not pay with a check or credit card.

RESPONSE 2: The commission and the board decided not to adopt the proposed language that would have prohibited cash payment. The commission and the board recognized that clients, particularly nonresident clients, often do not have the ability to pay with a check.

COMMENT 3: One comment stated the Board of Outfitters' rules already allow a guide to collect fees from clients as long as the guide has the express consent of the outfitter and the language was put in place to prevent guides from illegally acting as outfitters. This comment supported applying this language to fishing outfitting but opposed using it for hunting outfitting.

RESPONSE 3: The commission and board adopted language that allows a guide to collect payment on behalf of an outfitter as long as the guide has the express consent of the supervising outfitter and the payment is directly deposited to the outfitter that hired or contracted the guide. The commission and the board did not make a distinction between fishing and hunting outfitting but notes that hunting outfitting is prohibited on lands under the jurisdiction of the commission and the board.

COMMENT 4: One comment expressed concern that by allowing a guide to collect fees from clients, guides would begin to illegally operate as outfitters. They recommended that the commission and the board leave the rules as currently written.

RESPONSE 4: The commission and the board are satisfied that the adopted language requiring the express consent of the supervising outfitter will help to address the concern about guides illegally operating as an outfitter.

COMMENT 5: One comment opposed the proposed changes due to concern that the changes would further the commercialization of the people's wildlife and stated that it should not be that difficult to collect payment via internet, money order, or

other non-personal exchange of funds.

RESPONSE 5: The commission and the board are satisfied that the adopted language requiring the express consent of the supervising outfitter will help to address the concern about guides illegally operating as an outfitter which may help to address this individual's concerns about the further commercialization of wildlife.

/s/ Tom Towe  
Tom Towe, Chairman  
State Parks and Recreation Board

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Dan Vermillion  
Dan Vermillion, Chairman  
Fish and Wildlife Commission

Certified to the Secretary of State January 5, 2015.